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March 2, 2016

Hon. J. Paul Oetken, U.S.D.J.
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007-1312

**In Re: Avon Anti-Aging Skincare Cream Marketing and Sales Practices Litigation
*Jade Barrett v. Avon Products, Inc. - No. 13-cv-00150-(J.P.O.) (S.D.N.Y.)***

Dear Judge Oetken,

We represent Plaintiffs in the above referenced matter and we write to seek a status conference with Your Honor at the Court's earliest convenience to determine whether the Court would consider a renewed motion for class certification.

On September 30, 2015, the Court denied Plaintiffs' motion for class certification without prejudice, concluding, among other things that Plaintiffs failed to satisfy preponderance and ascertainability requirements. (ECF No. 200.) Pursuant to Rule 23(f), Plaintiffs filed a petition for leave to appeal, and on February 19, 2016, the Second Circuit denied Plaintiffs' request for immediate appeal as unwarranted at this time. (See Exh. A attached.)

Plaintiffs would like the opportunity to refine the Class Definition and Class Period and cure the perceived defects in the preponderance and ascertainability analyses. However, if the Court will not consider a renewed motion, then because the case in its current posture is no longer a class action and Plaintiffs do not meet the amount in controversy prerequisites for federal subject matter jurisdiction under 28 U.S.C. 1332(a), the complaint should be dismissed for lack of jurisdiction (again, without prejudice) to enable Plaintiffs to appeal the final judgment and the denial of class certification. *See Spread Enters., Inc. v. First Data Merchant Servs.*, 298 F.R.D. 54, 74-75 (E.D.N.Y. 2014) (class certification motion denied resulting in incomplete diversity, complaint dismissed for lack of subject matter jurisdiction; appeal taken); *see also Falcon v. Philips Electronics N. Am. Corp.*, 489 F. Supp. 2d 367, 368 (S.D.N.Y. 2007) (appealed

Hon. J. Paul Oetken, U.S.D.J.

March 2, 2016

Page 2

denial of motion for class certification and dismissal of plaintiff's complaint for lack of subject matter jurisdiction); *McGaughey v. Treistman*, 2007 WL 24935, *3-*4 (S.D.N.Y. 2007).

We thank Your Honor for your attention to this matter and we look forward to appearing before Your Honor again soon.

Very truly yours,
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO

s/ Caroline F. Bartlett

CAROLINE F. BARTLETT